C.S.1001

03

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

W.P. No. 1784 /2005

PETITIONER
NON-APPLICANT : Sardar Satpal Singh s/o Late Sardar Vidayal Singh, Babra, aged about 50 years, r/o Church Road, Kedarpur, P.S. & Tehsil Ambikapur, District Surguja, C.G.

P.N. No. 1809/05
Presented by Shri A.K. Prasad
dated 25/04/05

V E R S U S

RESPONDENT
APPLICANT : Jainath Shukla s/o Shiv Bihari Shukla, aged about 65 years, Occupation-Retired Government Servant, r/o Ambikapur, Present Address: Civil Lines, Dongargarh, District Rajnandgaon, C.G.

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP/1784/05 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

20.7.2005

Shri A.K. Prasad, counsel for the petitioner.

Shri M.P.S. Bhatia, counsel for the respondent.

The petitioner has preferred this petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of order dated 15.3.2005 (Annexure P-1) passed by the Rent Controlling Authority, Ambikapur whereby the petitioner's application for setting aside the exparte eviction decree has been rejected.

Brief facts, as set out in the writ petition, necessary for disposal of this writ petition are that the respondent herein filed an application under Section 23 (a) of the C.G. Accommodation Control Act, 1961 (hereinafter shall refer to as "the Act of 1961') before the Rent Controlling Authority, Ambikapur against the petitioner and his two brothers namely Iqbal Singh & Gurpal Singh for eviction of house situated at Plot Nos.1245 & 1246. The said application was allowed by the Rent Controlling Authority vide exparte order dated 2.1.2003 mentioning therein that the petitioner and his two brothers are deliberately avoiding the service and they have refused to take the notice. Further case of the petitioner is that the said decree was passed without any notice to the petitioner, therefore, the petitioner had moved an application for setting aside the same vide Annexure P-3 mentioning therein that the petitioner came to know about the passing of decree on 21.2.2005 by his counsel namely Shri Sanjay Singh, Advocate, who has received the said information from Shri Anil Dubey, Advocate in the office of

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Kanungo. The application of the petitioner was rejected by the authority vide order dated 15.3.2005 and being dissatisfied with that order the petitioner has preferred this petition.

I have heard learned counsel for the parties and perused the impugned order.

In the order it has been mentioned that since the petitioner and his two brothers are avoiding the service deliberately that is why exparte order was passed. The order of Rent Controlling Authority is wholly perverse and contrary to the legal provisions. Before passing the impugned order the Rent Controlling Authority ought to have satisfied himself whether the service of eviction application under Section 23(a) of the Act of 1961 was effected upon the petitioner in terms of the Order 5 Rules 15 to 17 of the CPC and if it was not served in that case the Rent Controlling Authority ought to have inquired about the date on which the petitioner came to know about the exparte decree in order to ascertain as to whether the application for setting aside that exparte decree was filed within the prescribed period of limitation. Therefore, the impugned order has not been passed in accordance with law.

Mr. Bhatia, counsel for the respondent at this stage after perusal of the record very fairly submitted that he has no objection if the exparte order is set aside, however, he submitted that a direction be given to the Rent Controlling Authority to decide the application filed by the respondent herein under Section 23(a) of the Act of 1961 within the specified period.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In view of above position & submission made by Mr. Bhatia, the writ petition is allowed, the impugned order as well as exparte decree dated 2.1.2005 are set aside and the Rent Controlling Authority, Ambikapur is directed to proceed with the disposal of the application of the respondent from that stage in accordance with law. The Rent Controlling Authority is further directed to decide the application of the respondent within a period of four months from the date of receipt of this order.

Parties are directed to appear before the Rent Controlling Authority, Ambikapur on 1.8.2005. Meanwhile, the office is directed to send the copy of this order by speed-post to Rent Controlling Authority, Ambikapur.

All the pending applications are stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge